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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 63.

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,
Petitioners,

v.

THE UNITED STATES.

Memorandum Amici Curiae of Grover A. Giles, Attorney General of the State of Utah, and Frank Langley, Attorney General of the State of Idaho,

IN SUPPORT OF THE PETITION FOR REHEARING.

GROVER A. GILES,
Attorney General of the State of Utah;

FRANK LANGLEY,
Attorney General of the State of Idaho,
Amici Curiae.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The undersigned *amici curiae* respectfully urge the Court to rehear the above-captioned case. The decision or decisions[1] in this case will not set at rest or repose the grievances which the Northwestern Shoshones have asserted against the government for so long a time.

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[1] The *amici* have some doubt whether there is any opinion in this case which will stand as the opinion of a quorum of the Court—which appears to be divided 3-2-1-3. In such circumstances, it is not to be expected that the bands of Indians concerned will be able to tell what the view of a majority of the Court actually is.

The *amici* despair of being able to explain to petitioner Indians that they are without redress for the taking of their country because nothing in the records of the United States shows that the United States intended to recognize their title. The petitioner tribes have always pointed to their treaty as establishing rights the violations of which they have so long protested. And until the present opinion, we had thought the law established that it was the understanding of the Indians in the making of the treaty which prevailed,[2] rather than what the representatives of the United States might have reported or have failed to report as to the intention of the United States. Specifically, how are these bands of Indians—as of the time of the Treaty of July 30, 1863, or at the present time—to understand that when they grant the United States a limited permission to use their country, the United States (in its own courts) is not merely guiltless but guileless when it takes not only what it bargained for but the entire use and benefit of their country? How are the bands to understand that when they had their claim to their ancestral country set to paper by the representative of the United States, and delineated with natural landmarks, nevertheless because they did not insist, in accordance with what this Court holds to be the white man's law, that the United States agreed never to take their land from under them they have no substantive rights on their part as against the United States? How can we explain to these bands that when the white man even returned to ask a modification of the treaty so that it would concede in the bands *no more* than they had had some fifteen years earlier, it should now be held to have conceded *no part* of what they had then or at any time held? How can the bands—who in common with other Indian peoples of our country have relied on this Court of all courts for an assessment of their rights in accordance with what they understood their treaty to provide—be expected to be convinced of the white man's

[2] The cases are noted by the Court in footnote 16.

justice when their understanding, heretofore furnishing the rule, is now held to mean only what the "tenor of the treaty" as written and interpreted by the white man may indicate?

We do not pass the statement of the concurring opinion that the finding that the treaty creates no legal obligations does not restrict Congress from such appropriations as its judgment dictates "for the health, education, and industrial advancement of said Indians". The fact is that Congress has done precious little for these wards. They are the object of charity; they have (except for those at the Fort Hall Reservation in Idaho) no Indian agent to communicate their needs; they have no program of government assistance in education or industry; they are scattered throughout the States we represent, truly men without a country of their own. Up to the time of the present decision, these bands have had the conviction that their plight was a legal wrong; that with the proceeds of the reparations which the United States would make them for having violated its covenant of friendship, they would be enabled to establish a tribal program—as have other tribes securing such recoveries—for their health, education and industrial advancement. We feel that in all these respects the Indians are right, and that this Court has, without proper warrant, reversed our fundamental law as to the legal rights of these minorities. The least that this Court can do is to grant a full rehearing.

Respectfully submitted,

GROVER A. GILES,
Attorney General of the State of Utah;

FRANK LANGLEY,
Attorney General of the State of Idaho.
Amici Curiae.